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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

[Docket No. FWS-R7-ES-2016-0056; FF07CMM00-FX-F R133707PB000]

RIN 1018-BA66

Co-Management of Subsistence Use of Polar Bears by Alaska Natives; Conservation of the Alaska-Chukotka Polar Bear Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking; solicitation of comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is authorized to issue regulations to facilitate the implementation of the sustainable harvest management obligations under the *Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population* (U.S.-Russia Agreement). To that end, the Service is soliciting public comment on the development of a regulatory program and local management structures for carrying out the responsibilities under the U.S.-Russia Agreement and title V of the Marine Mammal Protection Act of 1972, as amended. The Service is also interested in entering into a cooperative agreement with an Alaska Native Organization for the purposes of involving subsistence users in conservation and management of polar bears in Alaska, including the creation of effective two-way

communication pathways; collecting and exchanging local observations on polar bears for the development of sound management practices for polar bears in Alaska; managing and monitoring the harvest of polar bears for subsistence use; and developing a polar bear co-management structure.

DATES: We will accept comments received or postmarked by the end of the day on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

- U.S. mail or hand-delivery: Public Comments Processing, ATTN: FWS–R7–ES–2016–0056, U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, Virginia 22041–3803.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2016–0056.

FOR FURTHER INFORMATION CONTACT: Hilary Cooley, Polar Bear Project Leader, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503; by telephone (907) 786–3800; or by facsimile (907) 786–3816. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

One of the purposes of this advance notice of proposed rulemaking (ANPR) is to solicit public comments on developing and administering a co-management framework to manage the subsistence use of polar bears in Alaska. This effort would include implementation of the sustainable harvest management obligations of the *Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population* (U.S.-Russia Agreement) as implemented under title V of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 et seq.). Activities under a cooperative agreement could include the following: collaborating to collect information on the distribution, abundance, and health of polar bears; managing human and polar bear conflicts; assessing and protecting important habitats; and monitoring and managing subsistence harvest. We are also soliciting preliminary ideas about the content of regulations to facilitate implementation of harvest regulations for polar bears in the Alaska-Chukotka population in accordance with our obligations under the U.S.-Russia Agreement.

Background

As previously mentioned, the U.S.-Russia Agreement is implemented in the United States through title V of the MMPA. Congress passed the MMPA in 1972 to prevent marine mammal species and population stocks from declining beyond the point at which they ceased to be significant functioning elements in the ecosystems of which they are a part. The MMPA prohibits, with certain exceptions and exemptions, the take of

marine mammals. Prior to enactment of title V of the MMPA and ratification of the U.S.-Russia Agreement, section 101(b) of the MMPA governed the take of polar bears from the Alaska-Chukotka population, providing a general exemption for the taking of all marine mammals by any Indian, Aleut, or Eskimo who lives in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking is for subsistence purposes or for the purpose of creating and selling authentic native articles of handicraft and clothing, provided that the taking is not accomplished in a wasteful manner. Under MMPA section 101(b), if the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos is depleted, the taking may be regulated.

The MMPA also recognizes the intrinsic role that marine mammals have played and continue to play in the subsistence, cultural, and economic lives of Alaska Natives. The Service, in turn, recognizes the important role that Alaska Natives can play in the conservation of marine mammals such as the polar bear. Amendments to the MMPA in 1994 acknowledged this role by authorizing the Service to enter into cooperative agreements with Alaska Natives for the conservation and co-management of subsistence use of marine mammals (16 U.S.C. 1388).

Upon enactment of title V of the MMPA and ratification of the U.S.-Russia Agreement in 2007, the MMPA's Alaskan Native exemption under section 101(b) no longer applied with respect to take from the Alaska-Chukotka population of polar bears (16 U.S.C. 1423g). The U.S.-Russia Agreement and title V of the MMPA continues to allow consumptive use of polar bears for subsistence purposes or the creation of authentic native handicrafts and clothing by Alaskan natives, but subjects that use to a number of

restrictions, including those adopted by the U.S.-Russia Polar Bear Commission (Commission), the bilateral authority established under the U.S.-Russia Agreement.

The 2007 amendments to the MMPA also identified the Alaska Nanuuq Commission (ANC), and any successor entity, as the Alaska Native entity that represents all villages in the State of Alaska that engage in the annual subsistence taking of polar bears from the Alaska-Chukotka population. The ANC was established in 1995 to represent the interests of subsistence users and polar bear hunters on issues relating to the subsistence harvest of polar bears in Alaska. The 2007 amendments to the MMPA allow for the Service to share authority for the management of the taking of polar bears from the Alaska-Chukotka population for subsistence purposes with the ANC, or a successor entity, provided certain criteria are met, including: entering into a cooperative agreement with the Secretary of the Interior (Secretary) under section 119 for the conservation of bears; meaningfully monitoring compliance with title V and the U.S.-Russia Agreement by Alaska Native people; and administering a co-management program for polar bears in accordance with title V and the U.S.-Russia Agreement.

In 2008, the Service listed polar bears as a threatened species worldwide under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.) due to range-wide declines in sea ice. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Critical habitat has also been designated for polar bears in the United States. In addition, under section 4(d) of the ESA, the Secretary has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of threatened species. The Service determined that a section 4(d) rule

was appropriate for polar bears and issued one that adopts the existing conservation regulatory requirements under the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; 27 U.S.T. 1087) as the primary regulatory provisions for the polar bear. The Service has been working with a diverse team to develop a Conservation Management Plan for polar bears, and the final version is expected to be released by the end of the calendar year. Because polar bears are listed under the ESA, they are considered depleted under the MMPA.

In addition to the national legislation just discussed, polar bear management in the United States is guided by multi- and bilateral agreements. In 1973 the Governments of Canada, Denmark (on behalf of Greenland), Norway, the Soviet Union, and the United States entered into the *Agreement on the Conservation of Polar Bears* (Range States Agreement). In entering into the Range States Agreement, the Parties acknowledged that additional protection was required for polar bears and that it was best achieved through coordinated measures. Parties to the Range States Agreement have committed to protect the ecosystems of which polar bears are a part and to manage polar bear populations in accordance with sound conservation practices based on the best available scientific data. Parties agreed that polar bears could be taken for scientific purposes, for conservation purposes, to prevent serious disturbance of the management of other living resources, by local people using traditional methods in the exercise of their traditional rights, or wherever polar bears have or might have been subject to taking by traditional means. Under the Range States Agreement, a Circumpolar Action Plan was adopted in 2015 that includes a number of management and research efforts to further the conservation of the species.

In 1988, the Inuvialuit-Inupiat Polar Bear Management Agreement in the Southern Beaufort Sea was signed by the Inuvialuit Game Council and the North Slope Borough Fish and Game Committee (I-I Agreement). The I-I Agreement noted that the Inupiat of the United States and the Inuvialuit of Canada have traditionally harvested a portion of polar bears from the same population in the southern Beaufort Sea and recognized that the maintenance of a sustained harvest for traditional users in perpetuity requires that the number of polar bears taken annually not exceed the productivity of the population. Objectives of the I-I Agreement include maintaining a healthy viable population of polar bears in the southern Beaufort Sea and managing polar bears on a sustained-yield basis in accordance with all the best information available. The I-I Agreement provides protection to denning bears and family groups and establishes a process for determining an annual sustainable harvest.

Current Polar Bear Management

In 2000, the Government of the United States and the Government of the Russian Federation signed the U.S.-Russia Agreement. The U.S.-Russia Agreement pledges cooperation with the goal of ensuring the conservation of the Alaska-Chukotka polar bear population (ACBPB), conservation of its habitat, and the regulation of its use for subsistence purposes by native people. It prohibits the taking of polar bears from this population inconsistent with the terms of the U.S.-Russia Agreement or the Range States Agreement.

The U.S.-Russia Agreement entered into force on September 23, 2007. The U.S.-Russia Agreement, among other things, provides legal protections for the ACBPB, found in the Chukchi-Northern Bering Sea. The U.S.-Russia Agreement is implemented in the

United States through title V of the MMPA and builds upon those protections provided to polar bears through the 1973 Range States Agreement. The U.S.-Russia Agreement establishes a common legal, scientific, and administrative framework specifically for the conservation and management of the ACPBP shared between the United States and the Russian Federation. During the negotiation of the U.S.-Russia Agreement, it was recognized that continued availability of bears from the ACPBP for subsistence hunting in Alaska depended upon a coordinated management regime between the two countries. The negotiators, including those representing Alaskan Natives, determined that the best path forward was to replace the general subsistence take exemption contained in section 101(b) of the MMPA with the U.S.-Russia Agreement, which pledges coordinated management with the Russian Federation and provides for an equal role in management for government representatives and Native people in both Alaska and Russia.

Importantly, article 8 of the U.S.-Russia Agreement establishes the Commission, which is tasked with coordinating measures for the conservation and study of the ACPBP. The Commission includes a U.S. section and a Russian section, with each national section comprising two members; for the United States, there is one representative of the Federal Government and one representative of the Alaska Native interest. Under the U.S.-Russia Agreement, each section has one vote, and all decisions of the Commission may be made only with the approval of both sections. Consequently, the U.S. Native representative has an integral role in Commission actions and must be knowledgeable of, or have expertise in, polar bears. To date, although not required under title V of the MMPA, the U.S. Native Commissioner has been associated with the ANC,

the recognized co-management entity, and through that entity, the Commissioner received input to help form positions with the U.S. Federal Commissioner.

As identified above, the Federal Government has responsibility for the management and conservation of polar bears under a number of multi- and bilateral agreements and domestic laws and agreements. The Service has implemented its authorities in cooperation and collaboration with Alaskan Natives, to the extent allowable by law and regulation. We believe the active engagement and participation of Alaskan Natives is instrumental to successful implementation of our management actions, and we are committed to working to strengthen relationships to that end. We recognize that effective management of polar bears and human activities affecting polar bears and their habitat is greatly strengthened through the engagement, participation, and contribution of Alaskan Natives.

From 1997 to 2016, the Service has maintained cooperative agreements with the ANC. Through these cooperative agreements, the Service has worked to better understand the needs and interests of Alaska Native subsistence hunters and to exchange information on polar bears and their habitat. Since 2007, the Service's cooperative agreements with the ANC have focused on accomplishing polar bear conservation and implementing the U.S.-Russia Agreement.

The cooperative agreements between the Service and the ANC included a commitment to hold an annual meeting of the ANC. Commissioners from each of the 15 primary polar bear harvesting villages were appointed by their respective tribal governments to serve on the ANC Board. The cooperative agreements also included a requirement for coordination between the ANC Chairman and the ANC Commissioners

to ensure: (1) that all Commissioners were fully informed of the taking limitation that will be implemented for the ACPBP; (2) that community concerns about conservation, management, and subsistence use of polar bears were shared with the ANC executive leadership with copies to the Service; and (3) that Commissioners attended local tribal government meetings, including those with the ANC leadership and Service employees, to present information on the polar bear harvest and other information about polar bear management and conservation and provide relevant reports from these meetings to the ANC executive leadership with copies to the Service.

Consistent with these agreements, the ANC was requested to assist in monitoring polar bear harvest in the local community by providing information to the hunters and community on progress of the harvest and, when appropriate, helping to ensure that Marking, Tagging, and Reporting Program (MTRP) taggers completed their tagging and reporting requirements. The MTRP, established pursuant to section 109(i) of the MMPA, requires hunters to present polar bear hides and skulls within 30 days of harvesting for tagging. The MTRP involves a network in 105 communities throughout Alaska and includes approximately 170 individuals hired as taggers. The ANC also committed to develop and implement steps to obtain authority from the tribal village governments to implement and enforce the annual taking limit under the U.S.-Russia Agreement and to develop a harvest monitoring system that included: allocation procedures; reporting, tracking, and enforcement mechanisms; notification measures for providing real-time information on progress of harvest; and outreach and education materials.

At the second annual meeting of the Commission, which took place June 7–10, 2010, in Anchorage, Alaska (75 FR 65507, October 25, 2010), the Commissioners

adopted an annual limit of polar bears that may be removed from the ACPBP of no more than 58 bears per year, of which no more than 19 may be females, to be divided evenly between the two nations. The Commission determined that all forms of human-caused removal of individuals from the ACPBP will be incorporated in this annual taking limit. The Commission, at each of its subsequent annual meetings held in 2011, 2012, 2013, 2014, and 2015, has maintained this take limit to ensure the continued harvest of polar bears remains sustainable (81 FR 3153, January 20, 2016). In 2012, the Commission adopted a multiyear quota system establishing a 5-year harvest level allowing annual adjustments to increase or decrease the taking limit depending on the harvest in the preceding year(s).

It is important to recognize that the subsistence harvest of polar bears is the primary way animals are removed from the population, but not the only way that humans take polar bears; all forms of removal are incorporated in the annual taking limit adopted by the Commission. For example, pursuant to article 6 of the U.S.-Russia Agreement, polar bears from the ACPBP may be taken when human life is threatened. Article 6 also authorizes the take of polar bears for scientific research and for the purpose of rescuing or rehabilitating injured polar bears, consistent with the Range States Agreement. Thus, in the course of the U.S. subsistence harvest season, which currently consists of the entire calendar year, the annual taking limit will need to be adjusted to account for subsistence harvest and other forms of removal, should they occur.

Of equal importance for Alaska Native polar bear hunters to understand is that the Commission adopted an annual taking limit in which no more than one-third of the overall limit may be female. Therefore, in the implementation of the annual taking limit,

neither the limit on the total number of polar bears that may be removed from the population, nor the limit on the number of females that may be removed, can be exceeded.

Mechanisms for the Management of Polar Bears

The Service recognizes that federally enforced harvest limitations or closures for Alaska Native polar bear subsistence hunters have never been in place, and, therefore, we believe that the effectiveness of such measures is predicated on consultations and a collaborative co-management relationship with Alaska Natives and Tribal Governments. Such consultation is not only a crucial element of success, but also part of our responsibilities under the MMPA, and:

- the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951);
- Executive Order 13175;
- Department of the Interior Secretarial Order 3225 of January 19, 2001 [Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)];
- Department of the Interior Secretarial Order 3317 of December 1, 2011 (Tribal Consultation and Policy);
- Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy);
- the Department of the Interior's manual at 512 DM 2; and
- the Native American Policy of the U.S. Fish and Wildlife Service, January 20, 2016 (in the Service Manual at 510 FW 1).

In addition to working through and with our co-management partner, the ANC, the Service has conducted government-to-government consultations with tribal governments and held many informational meetings in villages and at other relevant forums and conferences. During these meetings, we have heard varying levels of awareness and satisfaction with the way the above duties assigned and agreed to by the ANC were implemented.

We have heard from Alaska Native tribal governments and stakeholders that communication regarding the subsistence use of polar bears has been imperfect in the past, and we realize that effective communication is essential to success. With that in mind, we wish to ensure that our future co-management partner: is capable of and committed to effectively facilitating communication between Alaska Native polar bear subsistence hunters and the Service; can ensure that Alaska Native tribal governments and their constituent members are fully informed of management plans, polar bear harvest regulation, and other relevant information about polar bear management and conservation; and effectively documents and communicates to the Service community concerns about polar bears and subsistence use. To do this, we anticipate an effective co-management partner will need to travel to Alaska Native villages, independently as well as with the Service, in order to facilitate full input by the Alaska Native community. Our co-management partner must also take steps to remain informed about the conservation, subsistence use, and co-management of polar bears, which may include participation in relevant local, state, national, and international meetings.

The ANC has been working towards developing details of a co-management plan for polar bears taken from the ACPBP. However, the Service has recently determined

that we will not be able to continue to provide financial support for the ANC's operations, and it is thus unlikely that the ANC will be able to continue to serve as the representative of Alaska Native people for polar bear subsistence use, as defined in title V of the MMPA, as well as for Alaska Native polar bear hunters taking bears from the Southern Beaufort Sea population. We continue to believe that the activities included in previous agreements with the ANC are important, and we are interested in feedback as well as suggestions for improved delivery methods to increase effectiveness.

Co-management Partnership to Represent Alaska Native Polar Bear Subsistence Hunters

The Service is seeking a co-management partner, as a successor entity to the ANC, that will provide the Commission with relevant information about the Chukchi Sea population in its deliberative process and serve as a co-management partner with the Service for managing the ACPBP in accordance with the U.S.-Russia Agreement. We also seek a partner to represent Alaska Native polar bear subsistence hunters who harvest polar bears from the Southern Beaufort Sea population, a population that is not regulated under the U.S.-Russia Agreement and title V of the MMPA. We are interested in Alaska Native input on the formation of a new co-management partner who is able to:

- (1) Involve subsistence users in conservation and management of polar bears in Alaska, including the creation of effective two-way communication;
- (2) Collect and exchange local observations on polar bears for the development of sound management practices for polar bears in Alaska;

(3) Develop a regional harvest management system in accordance with title V of the MMPA and the U.S.-Russia Agreement, including promulgation of local ordinances or regulations that restrict the taking of polar bears for subsistence purposes, allocation of a quota to Alaska Native subsistence hunters, monitoring Alaska Native subsistence harvest of polar bears, and, if necessary, enforcement by the co-management partner that complements Federal regulations; and

(4) Develop a polar bear co-management structure, which requires obtaining delegated governmental authority to represent, at a minimum, the 15 tribal governments in the State of Alaska that engage in the annual subsistence taking of polar bears from the Alaska-Chukotka population and the Southern Beaufort Sea population.

Thus, the appropriate Alaska Native Organization (ANO) would play an important role in informing positions of the United States at the Commission meetings. A committed and engaged partner is particularly important at this time given the commitments to implement the U.S.-Russia Agreement.

As noted above, we are also soliciting preliminary ideas about the content of regulations to facilitate implementation of harvest regulations for polar bears in the Alaska-Chukotka population. In order to ensure the annual taking limit established by the Commission is not exceeded, we believe it is necessary and appropriate to require more timely reporting, and we also need to ensure that hunters have effective notice of current information regarding the number and sex of bears that have been harvested relative to the annual taking limit. Therefore, we are seeking ideas and insights on: (1) the most effective ways to keep hunters informed of the number of bears available to

harvest during the course of a season and when the annual taking limit has been met; and
(2) the quickest and easiest ways for hunters to report their harvest.

Public Comments

We request comments and suggestions and encourage the submission of new ideas, materials, and recommendations from: the public; Alaska Native tribal governments, corporations, and organizations; environmental organizations; local, State, and Federal agencies; and any other interested party. Please ensure that the comments pertain only to the issues presented in this ANPR. You must submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the web site. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>. Comments and materials we receive will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the Service (see **FOR FURTHER INFORMATION CONTACT**).

We are interested in hearing from leaders and members of the Alaskan Native community, hunters, and tribal governments. We also welcome comments and information from Native Corporations, the State of Alaska, other governmental agencies, nongovernmental organizations, and members of the public. To be most useful, and most

likely to inform decisions, comments should be specific, be substantive, explain the reasoning behind the comment, and address the issues outlined in this ANPR.

For the purposes of this ANPR, we are seeking input on the development and implementation of a co-management framework to manage subsistence use of polar bears in Alaska, including the sustainable harvest management obligations of the U.S.-Russia Agreement as implemented under title V of the MMPA. We are also soliciting preliminary ideas about the content of regulations to facilitate implementation of harvest regulations for polar bears in the Alaska-Chukotka population. Because establishment and implementation of a co-management framework would not alter existing international obligations or national laws and regulations affecting polar bear management, including the U.S.-Russia Agreement, we are not seeking comments on those topics.

We are seeking comments on: (1) the appropriate activities and functions to be carried out by a co-management partner; (2) candidate organizations or entities to serve in the capacity of a co-management partner; (3) recommendations for improving the process for obtaining the input and engagement of Alaskan Natives in polar bear conservation and management; (4) recommendations for improving the exchange of information between the Federal Government and Alaskan Natives on polar bear conservation and management; and (5) methods and measures for effective implementation of polar bear harvest management, consistent with the obligations of the U.S.-Russia Agreement.

We are particularly interested in receiving comments on the following questions relating to the establishment and maintenance of a cooperative agreement with an ANO

for polar bear conservation and management and the promulgation of regulations to monitor and manage the harvest of polar bears from the Alaska-Chukotka population:

1. Should the Service enter into a cooperative agreement with a new ANO for polar bear conservation and management?
2. What functions and roles should a polar bear co-management entity perform?
3. How should a polar bear co-management entity be formed?
4. Are there existing organizations or entities that are capable of and interested in serving in the role of the polar bear co-management entity?
5. What methods are most effective for the exchange of information between the Federal Government and Alaskan Natives?
6. Should harvest regulations for polar bears in the Alaska-Chukotka population be promulgated only at the Federal level or issued by the polar bear co-management entity and then adopted in Federal regulations?
7. What is the appropriate timing for reporting of harvested bears?
8. What is the most effective method for reporting of harvested bears in a timely manner?

Next Steps and Timing

For all of the reasons identified above, the Service is interested in identifying a co-management partner in the immediate future so that we can ensure the effective engagement of Alaskan Natives in the many ongoing and time-critical polar bear management and conservation actions. It is our goal to have a co-management partner in place in 2017 so that they can proceed with securing the necessary authorizations from

tribal governments and, assuming that option is preferred, establish a program of locally enforceable ordinances for polar bear harvest from the ACPBP. Further, as discussed above, the U.S.-Russia Agreement is in effect, including the annual taking limit established by the Commission, and we have an obligation to take actions necessary for its implementation. Thus, one management option being considered by the Service is, in the absence of ordinances adopted by the ANC or its successor by which Federal regulations would be based, to proceed with promulgation of regulations at only the Federal level.

Authority: We issue this ANPR under the authority of title V of the MMPA (16 U.S.C. 1423 et seq.).

Dated: __October 25, 2016_____.

__Daniel M. Ashe_____

Director, U.S. Fish and Wildlife Service.

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